

Mushegan, Alexander@Waterboards

From: Varney, Paul H@DOT
Sent: Monday, December 23, 2013 11:53 AM
To: Mushegan, Alexander@Waterboards
Cc: Paul V (n2golfn1@sbcglobal.net)
Subject: FW: Clovis Sewage Treatment and Water Reuse Facility NPDES Permit
Attachments: Dry Creek Diversion License Agreement.pdf; 6140 Copper- City of Clovis License Agreement.pdf

Hi Alex,

I was reviewing my email and realized you didn't have the proposed License Agreement (2009) from the City of Clovis. I am attaching the document that was never executed. We feel the proposed discharge can impact the water quality of our well and decrease the property value due to an existing Fresno Metropolitan Flood Control District easement on 10 acres of the parcel.

I truly hope you don't allow the City of Clovis to discharge to the Dry Creek Diversion Channel. Since the City of Clovis hasn't completed the License, I don't know how you can allow this discharge. I don't think the City of Clovis has obtained any license Agreements with any of my neighbors either.

Please keep me informed.

Thanks

Paul Varney
D-6 NPDES Stormwater Coordinator
Central Region Environmental Division
2015 E. Shields, Suite 100
Fresno, CA, 93726
(559) 243-3568

From: Varney, Paul H@DOT
Sent: Thursday, November 14, 2013 10:42 AM
To: Mushegan, Alexander@Waterboards
Cc: Paul V (n2golfn1@sbcglobal.net)
Subject: RE: Clovis Sewage Treatment and Water Reuse Facility NPDES Permit

Hi Alex,

I have never received a response from the City of Clovis and would like to provide our response to become part of the public record in the attachment. The City of Clovis mapping shows a small area of the parcel that would be impacted, however there is an existing easement with the Fresno Metropolitan Flood Control District on approximately 10 acres of my mother's 30 acres. We rejected the License Agreement and there were no further negotiations.

Paul Varney
D-6 NPDES Stormwater Coordinator
Central Region Environmental Division
2015 E. Shields, Suite 100
Fresno, CA, 93726
(559) 243-3568

From: Mushegan, Alexander@Waterboards
Sent: Wednesday, November 13, 2013 10:41 AM
To: Varney, Paul H@DOT
Subject: Clovis Sewage Treatment and Water Reuse Facility NPDES Permit

Hi Paul,

I am aware that you had met with Matt Scroggins in 2009 to discuss concerns you had with the City of Clovis NPDES Permit. A tentative Order to renew the NPDES Permit should be going out for public comment this week. If you could respond with an address that you would prefer to have the notice of public hearing sent to, I will make sure to include you on the mailing list. Feel free to contact me if you have any questions.

Regards,

Alex Mushegan, E.I.T.
Water Resource Control Engineer
California Regional Water Quality Control Board
1685 E Street
Fresno, CA 93706
amushegan@waterboards.ca.gov
(559) 488-4397
(559) 445-5910 FAX

August 7, 2009

Steven E. White
City Engineer, City of Clovis
1033 Fifth Street
Clovis, CA 93612

Dear Mr. White,

Subject: **Dry Creek Diversion License Agreement for APN: 581-090-09**

I have reviewed the License Agreement provided on January 29, 2009. I feel allowing this proposed project and agreement will negatively impact the property value, impair/contaminate the water quality of the well that supplies household/drinking water for a parcel that is approximately 30 acres (APN: 581-090-09) and unknown/potential public safety and health issues.

The area the proposed project discharges to is not suitable for the following reasons:

- Is in a floodplain – 100 year FEMA Flood Zone
- Sewage lagoons and septic tank absorption fields have limitations
- Hydrologic Soil Groups (type C and D) have slow infiltration rates
- Drainage classifications of poorly drained soils
- Shallow depth to the water table

This information was obtained from the USDA-NRCS, Eastern Fresno Area, California soil survey area, survey area date September 26, 2008.

I honestly feel the project should be piped northwest along the Dry Creek alignment and discharged over 1000 feet north of the culverts/bridge near Fowler and Appaloosa Ave. Dry Creek actually flows in this area and there are not many residential wells north of Appaloosa Acres. This seems like the logical area for a discharge point which will eventually flow to the San Joaquin River instead of creating a toxic pond in Appaloosa Acres.

I reject your offer for the License Agreement. I would consider an offer of \$1,500,000.00, guaranteed clean drinking water for the entire parcel and further negotiations of the conditions in the agreement regarding possible injury to any person, or property rights..

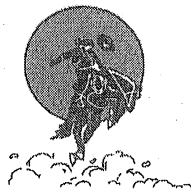
Please contact my son at (559) 439-4198 for further details, as he will be acting on my behalf.

Paul H. Varney
1442 W Barstow
Fresno, CA 93711

Sincerely,

Original signed by

Eugenia A. Varney
6140 E Copper
Clovis, CA 93619



PAGE HOLCOMB, PLS

City Surveyor

(559) 324-2359

FAX (559) 324-2844

E-mail: pageh@cityofclovis.com

CITY OF CLOVIS

1033 Fifth Street • Clovis, California 93612



CITY OF CLOVIS

CITY HALL • 1033 FIFTH STREET • CLOVIS, CA 93612

January 29, 2009

Eugenia A. Varney
6140 E. Copper Avenue
Clovis, CA 93619

Dear Ms. Varney:

Subject: License Agreement Information
A Portion of Your Property Located along the diversion channel.
Address: Diversion Channel
A Portion of APN: 581-090-09

The City of Clovis asks for your cooperation to acquire a License Agreement for an irregularly shaped parcel along the Dry Creek Diversion Channel to discharge water through the existing FMFCD Channel Easement.

We would like to reach an agreement with you. Enclosed with this letter is the license agreement that would accomplish this. If this is acceptable to you, please sign and return the original and copy of the license agreement (note that the signatures must be notarized). A fully executed copy of the license agreement will be returned to you.

If you have questions or would like to discuss these matters in further detail, please contact Page Holcomb, City Surveyor at (559) 324-2359. If he is not available, you may also contact Steven E. White, City Engineer at (559) 324-2355.

Very truly yours,

STEVEN E. WHITE
CITY ENGINEER

Page Holcomb
City Surveyor
PH:

WHEN RECORDED RETURN TO)
AND RECORDING REQUESTED BY:)

[For Recorder's Use Only]

City of Clovis)
Attn: Page Holcomb)
1033 Fifth Street)
Clovis, CA 93612)

Exempt from recording fees per Gov. Code §27383

LICENSE AGREEMENT

This License Agreement ("Agreement") is made and entered into and effective on _____, 2009, by and between **EUGENIA A. VARNEY REVOCABLE TRUST U/D/T/ DATED DECEMBER 18, 2006** ("Licensor"), and the City of Clovis, a California municipal corporation ("Licensee").

Recitals

- A. Licensor is the owner of real property located in the County of Fresno, California, identified as Fresno County Assessor's Parcel No. **581-090-09** ("Property"); and
- B. An easement in favor of the Fresno Metropolitan Flood Control District ("FMFCD") encumbers the Property, and gives FMFCD the right to pass water across and through the Property from the Big Dry Creek Reservoir to the San Joaquin River ("Channel Easement"); and
- C. FMFCD maintains the Channel Easement on, over, and through the Property; which Channel Easement is more particularly described in Exhibit "A" and depicted on Exhibit "B" attached hereto and incorporated herein.
- D. Licensee desires to discharge a limited volume of disinfected treated wastewater from its Sewage Treatment and Water Reuse Facility ("Water") into the portion of the Channel Easement depicted on Exhibit "C" attached hereto ("License Area") in a manner that will not interfere with the discharge by FMFCD of the maximum authorized flow of water into and through the Channel Easement; and
- E. Licensee's discharge of Water into the License Area shall be conditioned on and subject to (i) Licensee obtaining all applicable prior approvals and permits from regulatory agencies having appropriate jurisdiction, including, without limitation, the California Department of Public Health, the California Regional Water Quality Control Board for the Central Valley, and the United States Army Corps of Engineers, and (ii) Licensee entering into an operations agreement with FMFCD that will govern the manner, circumstances, and conditions of Licensee's discharge of Water into the License Area and the volume and timing of such discharge.

NOW, THEREFORE, LICENSOR AND LICENSEE HEREBY MUTUALLY AGREE AS FOLLOWS:

Agreement

1. Recitals. The recitals stated above are true and correct and are a substantive part of this Agreement.

2. Grant of License. In consideration of receipt of the sum of \$500.00 ("License Fee") from Licensee, receipt of said sum is hereby acknowledged, Licensor hereby grants to Licensee a perpetual and irrevocable license ("License") to discharge, release, and convey Water, including the passage and ponding of Water, into the License Area. The License includes the right of Licensee to enter upon the Property, at reasonable times and in a reasonable manner, to monitor the Water in the License Area and conduct testing, inspections, observations, or any other activities reasonably necessary to ensure compliance with applicable regulatory requirements. The rights granted to and the obligations imposed on Licensee shall extend to Licensee's officers, agents, employees, volunteers, vendors, and contractors.

3. Limitations on Discharge of Water. Licensee shall not discharge any Water into the License Area pursuant to this Agreement or otherwise in any manner, volume or condition that is not fully consistent with the applicable regulatory requirements, permits, and the operations agreement between Licensee and FMFCD concerning such discharge.

4. Prior Approvals and Permits. Licensee shall not discharge any Water into the License Area unless and until Licensee has first obtained any and all approvals and permits required by local, state and federal regulatory agencies having jurisdiction with respect to such Water, the License Area, the Channel Easement or any property or waters affected by that discharge, including, without limitation, the California Department of Public Health, the California Regional Water Quality Control Board for the Central Valley, and the United States Army Corps of Engineers.

5. Irrevocable Nature of License. Notwithstanding any provision of the law to the contrary, but subject to the provisions of this Agreement, the License granted by this Agreement is irrevocable.

6. Termination of License. This Agreement and the License granted herein may be terminated only upon mutual written agreement of the Licensor and Licensee.

7. Improvements and Costs. Should any improvements to the Channel Easement or the License Area be necessary to accommodate Licensee's Water, Licensee shall be solely responsible (as between Licensor and Licensee) for any costs for such improvements and for any costs incurred by Licensee associated with the exercise of its rights pursuant to this Agreement.

8. Indemnification. Licensee shall indemnify, defend, and hold harmless the Licensor and Licensor's officers, agents, employees, volunteers, vendors and contractors from and against any claim, liability, loss, or damage caused by any willful misconduct or negligent act or omission of the Licensee or Licensee's officers, agents, employees, volunteers, vendors, or contractors arising out of Licensee's exercise of its rights and obligations pursuant to this Agreement, except to the extent such claim, liability, loss, or damage is caused in whole or in part by the negligence or willful misconduct of others including Licensor.

9. Amendment of Agreement. No modification of, deletion from, or addition to this Agreement shall be effective unless made in writing and executed by both the Licensee and Licensor.

10. Severability. In the event any clause, sentence, term or provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, the remaining portions of this Agreement shall nonetheless remain in full force and effect. This Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against either of the parties.

11. Binding on Heirs. This Agreement is to be recorded and is for the direct benefit of the Licensee. The rights and obligations in this Agreement are intended to and shall run with the land, and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, grantees, transferees, successors, and assigns.

12. Governing Law. This Agreement is made under and shall be construed in accordance with the laws of the State of California.

13. Partnership/Joint Venture. This Agreement does not evidence a partnership or joint venture between the Licensee and Licensor.

14. Third Party Beneficiaries. Except as provided with respect to FMFCD, nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

15. Captions and Headings. The captions and headings in this Agreement are inserted only as a matter of convenience and for reference, and in no way define the scope or the extent of this Agreement or the construction of any provision.

16. Voluntary Agreement; Authority to Execute. Licensee and Licensor each represent that they have read this Agreement in full and understand and voluntarily agree to all provisions herein. The parties further declare that prior to signing this Agreement they each had the opportunity to apprise themselves of relevant data, through sources of their own selection, including consultation with counsel of their choosing if desired, in deciding whether to execute this Agreement. The signatories to this Agreement represent that they have the proper authority to execute this Agreement on behalf of the respective party.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date and year first above written.

CITY OF CLOVIS

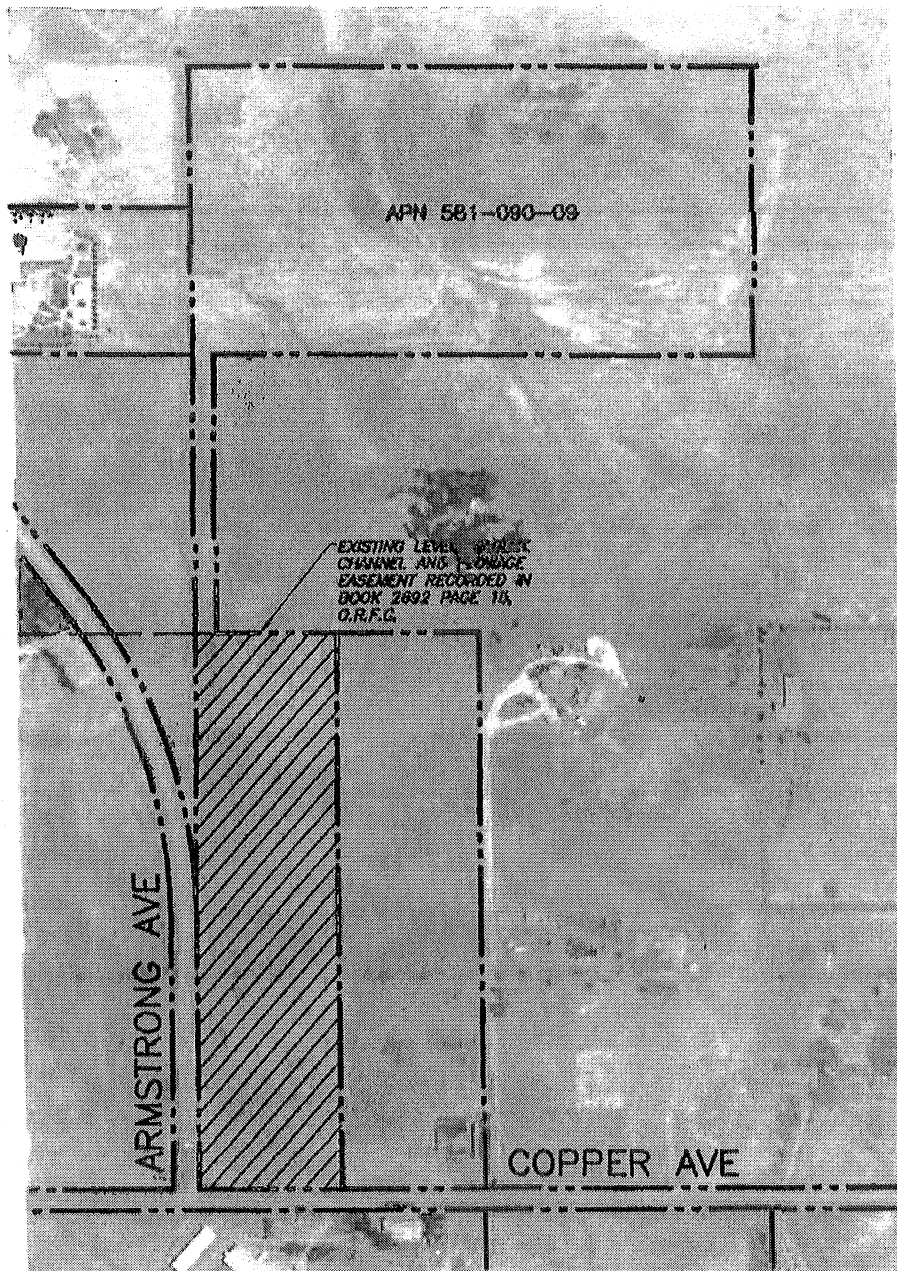
OWNER

By: _____
Kathy Millison, City Manager

By: _____
Eugenia A. Varney, Trustee

EXHIBIT "B"

(Map depicting Property – to be attached)



LEGEND

- O.R.F.C. OFFICIAL RECORDS OF FRESNO COUNTY
- EXISTING PROPERTY LINE OR RIGHT OF WAY LINE
- EXISTING DRY CREEK CHANNEL EASEMENT BOUNDARY
- /// AREA OF LICENSE AGREEMENT

NOTE: AERIAL PHOTOGRAPHY
SCALE AND RECTIFICATION
ARE APPROXIMATE.




SCALE: 1"=400'

EXHIBIT "B"

<p>Blair, Church Flynn CONSULTING ENGINEERS</p>	<p>CONSULTANT Blair, Church & Flynn Consulting Engineers 451 Clovis Avenue, Suite 200 Clovis, California 93312 Tel. (508) 328-6400 Fax (508) 328-3000</p>	<p>CITY OF CLOVIS BIG DRY CREEK DIVERSION CHANNEL TO LITTLE DRY CREEK LICENSE AGREEMENT APN 581-090-09</p>		<p>DR. BY AYY CH. BY KEK DATE 5-7-08 SCALE: 1"=400'</p>	<p>SHEET NO. 1 OF 1 SHEETS</p>
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LEGEND

- O.R.F.C. OFFICIAL RECORDS OF FRESNO COUNTY
- EXISTING PROPERTY LINE OR RIGHT OF WAY LINE
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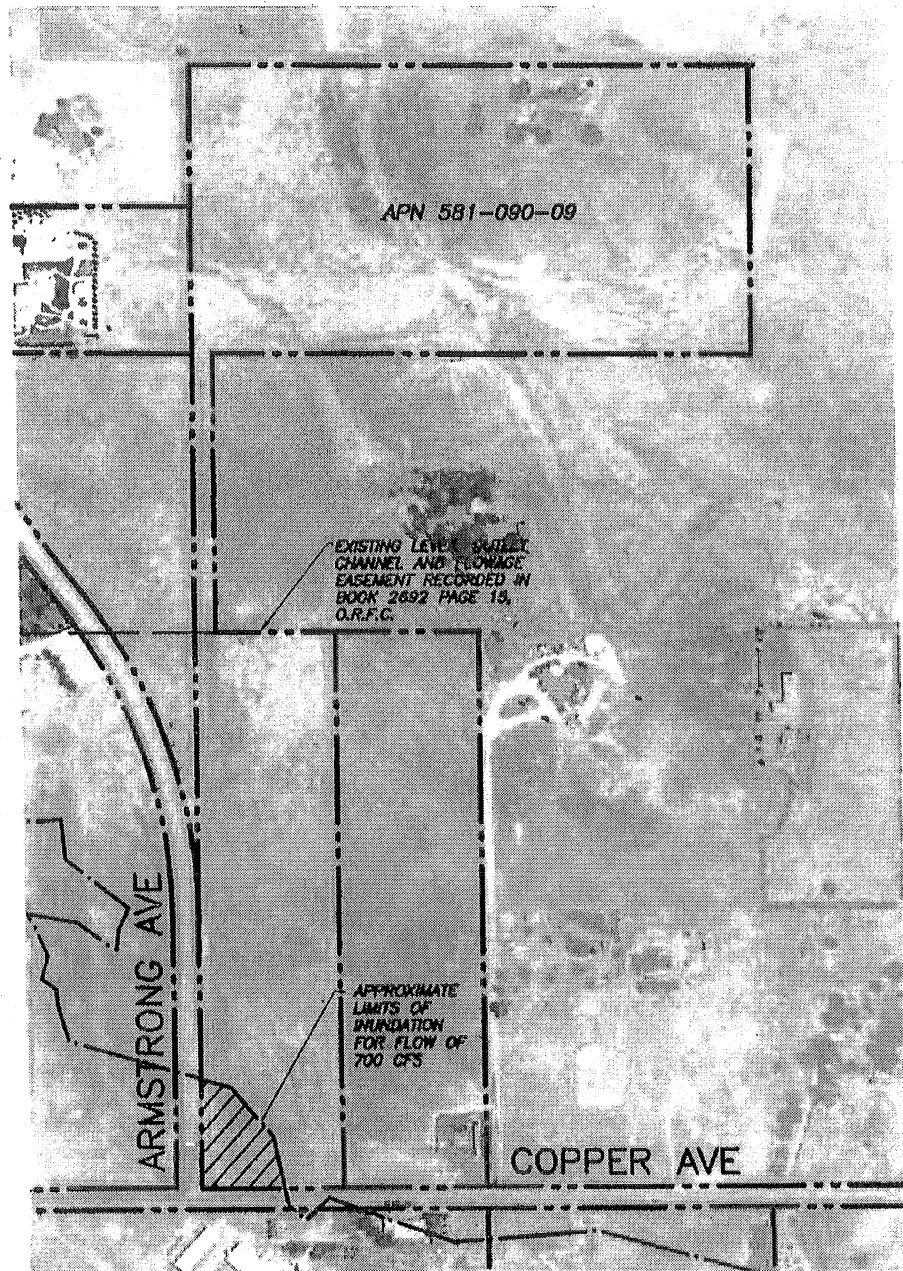
SCALE: 1"=400'

EXHIBIT "B"

Blair, Church & Flynn CONSULTING ENGINEERS	CONSULTANT Blair, Church & Flynn Consulting Engineers 461 Clovis Avenue, Suite 200 Clovis, California 93612 Tel. (509) 228-1400 Fax (509) 228-1000	CITY OF CLOVIS BIG DRY CREEK DIVERSION CHANNEL TO LITTLE DRY CREEK LICENSE AGREEMENT APN 581-090-09		DR. BY AYY CH. BY KEK DATE 5-7-08 SCALE: 1"=400'	SHEET NO. 1 OF 1 SHEETS
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EXHIBIT "C"

(Map depicting License Area – to be attached)



LEGEND

- O.R.F.C. OFFICIAL RECORDS OF FRESNO COUNTY
- EXISTING PROPERTY LINE OR RIGHT OF WAY LINE
- EXISTING DRY CREEK CHANNEL EASEMENT BOUNDARY
- APPROXIMATE LIMITS OF INUNDATION FOR FLOW OF 700 CFS
- /// APPROXIMATE AREA OF INUNDATION FOR PARCEL SHOWN

NOTE: AERIAL PHOTOGRAPHY
SCALE AND RECTIFICATION
ARE APPROXIMATE.



SCALE: 1"=400'

EXHIBIT "C"

**Blair,
Church
& Flynn**
CONSULTING ENGINEERS

CONSULTANT

Blair, Church & Flynn
Consulting Engineers
401 Clovis Avenue
Suite 300
Clovis, California 93612
Tel. (559) 326-0400
Fax (559) 328-0500

CITY OF CLOVIS


**BIG DRY CREEK DIVERSION CHANNEL TO LITTLE DRY CREEK
LICENSE AGREEMENT
APN 581-090-09**

DR. BY AW
CH. BY KEK
DATE 4-29-08
SCALE: 1"=400'

SHEET NO. 1
OF 1 SHEETS



LEGEND

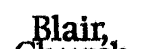
- O.R.F.C.** OFFICIAL RECORDS OF FRESNO COUNTY
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NOTE: AERIAL PHOTOGRAPHY
SCALE AND RECTIFICATION
ARE APPROXIMATE.



SCALE: 1"=400'

EXHIBIT "C"

 Blair, Church & Flynn <small>CONSULTING ENGINEERS</small>	CONSULTANT Blair, Church & Flynn Consulting Engineers 4555 Clovis Avenue, Suite 200 Clovis, California 93612 Tel: (559) 326-1400 Fax: (559) 326-0500	CITY OF CLOVIS			
		BIG DRY CREEK DIVERSION CHANNEL TO LITTLE DRY CREEK LICENSE AGREEMENT APN 581-090-09			
		DR. BY CH. BY DATE SCALE:	AYY KEK 4-29-08 1"=400'	SHEET NO. 1 OF 1 SHEETS	